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9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 Gerardo Vargas,) Case No.
12)
13 Plaintiff,) **COMPLAINT AND TRIAL BY JURY**
14) **DEMAND**
15 vs.)
16)
17 Collection Bureau of America, Ltd.,)
18)
19 Defendant.)
20)
21)

22 **NATURE OF ACTION**

23 1. This is an action brought under the federal Fair Debt Collection Practices
24 Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* and the Telephone Consumer Protection Act
25 ("TCPA"), 47 U.S.C. § 227.

26 **JURISDICTION AND VENUE**

27 2. This Court has jurisdiction under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331,
28 and 47 U.S.C. § 227(b)(3).

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
the acts and transactions giving rise to Mr. Vargas's action occurred in this district, where

1 Mr. Vargas resides in this district, and/or where Defendant transacts business in this
2 district.

3
4 **PARTIES**

5 4. Plaintiff, Gerardo Vargas (“Mr. Vargas”), is a natural person who at all
6 relevant times resided in the State of Arizona, County of Maricopa, and City of Glendale.

7
8 5. Mr. Vargas is a “consumer” as defined by 15 U.S.C. § 1692a(3).

9 6. Defendant, Collection Bureau of America, Ltd. (“Defendant”), is an entity
10 who at all relevant times was engaged, by use of the mails and telephone, in the business
11 of attempting to collect a “debt” from Mr. Vargas, as defined by 15 U.S.C. § 1692a(5).

12
13 7. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

14 **FACTUAL ALLEGATIONS**

15 8. Mr. Vargas is a natural person obligated, or allegedly obligated, to pay a
16 debt owed or due, or asserted to be owed or due a creditor other than Defendant.

17
18 9. Mr. Vargas’s obligation, or alleged obligation, owed or due, or asserted to
19 be owed or due a creditor other than Defendant, arises from a transaction in which the
20 money, property, insurance, or services that are the subject of the transaction were
21 incurred primarily for personal, family, or household purposes – namely personal and
22 household drinking water equipment and service fees (the “Debt”).

23
24
25 10. Defendant uses instrumentalities of interstate commerce or the mails in a
26 business the principal purpose of which is the collection of any debts, and/or regularly
27 collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be
28 owed or due another.

1 11. In or before July 2012, Mr. Vargas discovered a negative tradeline entry
2 that Defendant had reported on his credit report.

3
4 12. The entry reported a total balance due in the amount of \$493 as of April
5 2007, with an alleged date of first delinquency as of November 2006.

6 13. On July 27, 2012, Mr. Vargas called Defendant, and at such time, spoke
7 with Defendant's agent and/or employee "Clark."

8
9 14. During the July 27, 2012 conversation, Mr. Vargas told "Clark" that he
10 would like the negative entry deleted from his credit report and discussed possible
11 settlement of the balance.

12
13 15. Clark stated to Mr. Vargas that while the balance had initially been \$493 in
14 2006, that the amount had increased to \$771 due to six years worth of interest accrued.

15 16. Clark stated that debt balance comprised the original water bill of \$248,
16 plus an additional \$200 for an unreturned water machine, \$278 in interest, "and then
17 you've got to pay the fees for coming to collections."

18
19 17. Mr. Vargas asked Clark how long the debt would stay on Mr. Vargas's
20 credit report, "because if it's from 2006, isn't it going to come off already?"

21
22 18. Clark responded: "No it's not going to come off for another few years.
23 And then it don't fall all the way off, it just says, uh, never paid. Uh, it just updates your
24 credit report to never paid."

25
26 19. Also during the July 27, 2012 conversation, Mr. Vargas asked Clark if
27 Defendant sues people to collect debts.

1 20. Clark stated “No, no, no, we wouldn’t do that because you’re going to take
2 care of it, right?”

3
4 21. Mr. Vargas responded affirmatively, and Clark stated: “Yeah we wouldn’t
5 sue you if you’re going to take care of it.”

6 22. Although Clark implied that if Mr. Vargas did not “take care of” the debt
7 then Defendant would sue Mr. Vargas, upon information and good-faith belief, Clark had
8 no specific personal knowledge whether Defendant would or would not sue Mr. Vargas
9 to collect the debt.
10

11 23. Rather, upon information and good-faith belief, Clark made the above
12 statements to Mr. Vargas simply to coerce him into paying the alleged debt.
13

14 24. On July 31, 2012, Mr. Vargas called Defendant and discussed potential
15 settlement of the debt with Defendant’s agent and/or employee “Tonya.”
16

17 25. During the July 31, 2012 conversation, Mr. Vargas negotiated possible
18 settlement of the alleged debt with Tonya and discussed possible deletion of the account
19 from Mr. Vargas’s credit report.
20

21 26. Mr. Vargas asked Tonya how long it would be before the entry “falls off”
22 his credit report.

23 27. Tonya responded in a condescending tone: “I’m not the credit reporting
24 agency... but *good luck*. I mean, it’s already been since 2006.”
25

26 28. Mr. Vargas responded: “So it’s, like, almost off?”
27
28

1 29. Tonya replied: “ ‘Is it almost off?’ I’m not the credit reporting agency, sir.
2
3 And no, they don’t usually come off just after 7 years like everybody seems to think that
4 they do.”

5 30. Mr. Vargas continued to attempt to negotiate settlement of the debt, and
6 offered Defendant \$100 or \$200.

7
8 31. During the July 31, 2012 conversation, Tonya told Mr. Vargas that
9 Defendant will not accept that amount, and that Mr. Vargas’s offers were “almost a slap
10 in the face to me and my company.”

11
12 32. In connection with the collection of the Debt, Defendant sent Mr. Vargas
13 written communication dated July 31, 2012, and in such communication, stated in
14 relevant part:

Principal:	\$248.04
Late Payment Charge/Interest:	\$278.13
Equipment Charge/Misc:	\$245.25
Total:	\$771.42

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19 (See July 31, 2012 Correspondence, attached as Exhibit A).

20 33. In connection with the collection of the Debt, Defendant placed a call to
21 Mr. Vargas’s cellular telephone number on August 6, 2012 at about 3:55 P.M., and at
22 such time, left the following voicemail message:

23
24 [4 seconds of hold music] Thank you for holding we look forward to
25 talking with you soon please hold the line and we’ll be right back with you.
26 [20 seconds of hold music]. Hello. [7 seconds of background noise] Where
27 this chump at? Ah man.

28 34. By calling Mr. Vargas a “chump” in its August 6, 2012 voicemail message,
Defendant used language the natural consequence of which is to abuse Mr. Vargas.

1 35. In its August 6, 2012 voicemail message, Defendant failed to notify Mr.
2 Vargas that the communication was from a debt collector, and failed to disclose its true
3 corporate or business name.
4

5 36. In failing to disclose that the communication was from a debt collector, and
6 in failing to disclose its true corporate or business name in its August 6, 2012 voicemail
7 message, Defendant failed to meaningfully disclose its identity to Mr. Vargas.
8

9 37. During the August 6, 2012 telephone call, Defendant delivered a voicemail
10 message to Mr. Vargas using an artificial or pre-recorded voice before a live person
11 spoke.
12

13 38. Upon information and good-faith belief, Defendant placed telephone calls
14 to Mr. Vargas's cellular telephone number using an automatic telephone dialing system.
15

16 39. Defendant did not place any telephone calls to Mr. Vargas for emergency
17 purposes.
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19 40. Defendant did not have Mr. Vargas's prior express consent to make any
20 telephone calls to Mr. Vargas's cellular telephone number.
21

22 41. Upon information and good-faith belief, Defendant placed telephone calls
23 to Mr. Vargas voluntarily.
24

25 42. Upon information and good-faith belief, Defendant placed telephone calls
26 to Mr. Vargas under its own free will.
27

28 43. Upon information and good-faith belief, Defendant had knowledge that it
was using an automatic telephone dialing system to make and/or place telephone calls to
Mr. Vargas.

1 44. Upon information and good-faith belief, Defendant intended to use an
2 automatic telephone dialing system to make and/or place telephone calls to Mr. Vargas.

3
4 45. Upon information and good-faith belief, Defendant maintains business
5 records that show all calls Defendant placed to Mr. Vargas's cellular telephone number
6 using an automatic telephone dialing system or an artificial or prerecorded voice.

7
8 46. Defendant's actions constitute conduct highly offensive to a reasonable
9 person, and as a result of Defendant's harassing efforts to collect the outstanding debt
10 alleged due, Mr. Vargas has suffered mental anguish, emotional distress, and other
11 damages.

12
13 47. On November 19, 2012, Mr. Vargas, by and through his counsel, sent
14 Defendant written correspondence requesting, among other things, the evidence and other
15 documents in Defendant's possession related to the alleged debt pursuant to Arizona
16 Administrative Code R20-4-1514 and -1521.

17
18 48. Defendant failed to respond to the correspondence, and failed to provide
19 Mr. Vargas's counsel with any evidence of the alleged debt.
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21 **COUNT I**
22 **VIOLATION OF 15 U.S.C. § 1692d(2)**

23 49. Mr. Vargas repeats and re-alleges each and every factual allegation
24 contained above.

25 50. Defendant violated 15 U.S.C. § 1692d(2) by using language the natural
26 consequence of which is to abuse Mr. Vargas, in connection with collection of an alleged
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1 debt, including by calling Mr. Vargas a “chump” in its August 6, 2012 voicemail
2 message.

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4 WHEREFORE, Mr. Vargas prays for relief and judgment, as follows:

- 5 a) Adjudging that Defendant violated 15 U.S.C. § 1692d(2);
6 b) Awarding Mr. Vargas statutory damages, pursuant to 15 U.S.C. §
7 1692k(a)(2)(A), in the amount of \$1,000.00;
8 c) Awarding Mr. Vargas actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
9 d) Awarding Mr. Vargas reasonable attorneys’ fees and costs incurred in this
10 action;
11 e) Awarding Mr. Vargas any pre-judgment and post-judgment interest as may
12 be allowed under the law;
13 f) Awarding such other and further relief as the Court may deem just and
14 proper.
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18 **COUNT II**
19 **VIOLATION OF 15 U.S.C. § 1692d(6)**

20 51. Mr. Vargas repeats and re-alleges each and every factual allegation
21 contained above.

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23 52. Defendant violated 15 U.S.C. § 1692d(6) by placing telephone calls
24 without meaningfully disclosing the caller’s identity.

25 WHEREFORE, Mr. Vargas prays for relief and judgment, as follows:

- 26 a) Adjudging that Defendant violated 15 U.S.C. § 1692d(6);
27 b) Awarding Mr. Vargas statutory damages, pursuant to 15 U.S.C. §
28

1 1692k(a)(2)(A), in the amount of \$1,000.00;

2 c) Awarding Mr. Vargas actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

3
4 d) Awarding Mr. Vargas reasonable attorneys' fees and costs incurred in this
5 action;

6 e) Awarding Mr. Vargas any pre-judgment and post-judgment interest as may
7
8 be allowed under the law;

9 f) Awarding such other and further relief as the Court may deem just and
10 proper.

11
12 **COUNT III**
13 **VIOLATION OF 15 U.S.C. § 1692e(2)(A)**

14 53. Mr. Vargas repeats and re-alleges each and every factual allegation
15 contained above.

16 54. Defendant violated 15 U.S.C. § 1692e(2)(A) by falsely representing the
17 character, amount, or legal status of Mr. Vargas's alleged debt.

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19 WHEREFORE, Mr. Vargas prays for relief and judgment, as follows:

20 a) Adjudging that Defendant violated 15 U.S.C. § 1692e(2)(A);

21 b) Awarding Mr. Vargas statutory damages, pursuant to 15 U.S.C. §
22 1692k(a)(2)(A), in the amount of \$1,000.00;

23 c) Awarding Mr. Vargas actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

24 d) Awarding Mr. Vargas reasonable attorneys' fees and costs incurred in this
25
26 action;
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- 1 e) Awarding Mr. Vargas any pre-judgment and post-judgment interest as may
2 be allowed under the law;
3
4 f) Awarding such other and further relief as the Court may deem just and
5 proper.

6 **COUNT IV**
7 **VIOLATION OF 15 U.S.C. § 1692e(5)**

8 55. Mr. Vargas repeats and re-alleges each and every factual allegation
9 contained above.
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11 56. Defendant violated 15 U.S.C. § 1692e(5) by threatening to take an action
12 that cannot legally be taken or that is not intended to be taken, including by falsely
13 representing that Defendant would sue Plaintiff to collect the alleged debt, when upon
14 information and good-faith belief, Defendant did not intend to sue Plaintiff, and could not
15 legally sue Plaintiff as the alleged debt was beyond the limitations period.
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17 WHEREFORE, Mr. Vargas prays for relief and judgment, as follows:
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- 19 a) Adjudging that Defendant violated 15 U.S.C. § 1692e(5);
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21 b) Awarding Mr. Vargas statutory damages, pursuant to 15 U.S.C. §
22 1692k(a)(2)(A), in the amount of \$1,000.00;
23
24 c) Awarding Mr. Vargas actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
25
26 d) Awarding Mr. Vargas reasonable attorneys' fees and costs incurred in this
27 action;
28
e) Awarding Mr. Vargas any pre-judgment and post-judgment interest as may
be allowed under the law;

1 f) Awarding such other and further relief as the Court may deem just and
2 proper.
3

4 **COUNT V**
5 **VIOLATION OF 15 U.S.C. § 1692e(10)**

6 57. Mr. Vargas repeats and re-alleges each and every factual allegation
7 contained above.

8 58. Defendant violated 15 U.S.C. § 1692e(10) by using false, deceptive, and
9 misleading representations or means in connection with the collection of an alleged debt,
10 including representing that Mr. Vargas's debt would not be removed from his credit
11 report after 7 years on several occasions; and misrepresenting that Mr. Vargas may be
12 sued when upon information and belief, Defendant's employee had no specific
13 knowledge about whether Mr. Vargas would be sued.
14

15 WHEREFORE, Mr. Vargas prays for relief and judgment, as follows:
16

- 17 a) Adjudging that Defendant violated 15 U.S.C. § 1692e(10);
18
19 b) Awarding Mr. Vargas statutory damages, pursuant to 15 U.S.C. §
20 1692k(a)(2)(A), in the amount of \$1,000.00;
21
22 c) Awarding Mr. Vargas actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
23
24 d) Awarding Mr. Vargas reasonable attorneys' fees and costs incurred in this
25 action;
26
27 e) Awarding Mr. Vargas any pre-judgment and post-judgment interest as may
28 be allowed under the law;

1 f) Awarding such other and further relief as the Court may deem just and
2 proper.
3

4 **COUNT VI**
5 **VIOLATION OF 15 U.S.C. § 1692e(11)**

6 59. Mr. Vargas repeats and re-alleges each and every factual allegation
7 contained above.

8 60. Defendant violated 15 U.S.C. § 1692e(11) by failing to notify Mr. Vargas
9 during each collection contact that the communication was from a debt collector.
10

11 WHEREFORE, Mr. Vargas prays for relief and judgment, as follows:

- 12 a) Adjudging that Defendant violated 15 U.S.C. § 1692e(11);
13
14 b) Awarding Mr. Vargas statutory damages, pursuant to 15 U.S.C. §
15 1692k(a)(2)(A), in the amount of \$1,000.00;
16
17 c) Awarding Mr. Vargas actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
18
19 d) Awarding Mr. Vargas reasonable attorneys' fees and costs incurred in this
20 action;
21
22 e) Awarding Mr. Vargas any pre-judgment and post-judgment interest as may
23 be allowed under the law;
24
25 f) Awarding such other and further relief as the Court may deem just and
26 proper.
27

28 **COUNT VII**
VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)

61. Mr. Vargas repeats and re-alleges each and every factual allegation above.

1 62. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by willfully and
2 knowingly placing non-emergency calls to Mr. Vargas's cellular telephone, without the
3 prior express consent of Mr. Vargas, using an automatic telephone dialing system and/or
4 an artificial or pre-recorded voice.
5

6 WHEREFORE, Mr. Vargas prays for relief and judgment, as follows:
7

- 8 a) Adjudging that Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii);
- 9 b) Enjoining Defendant from placing any further telephone calls to Mr.
10 Vargas in violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(A);
- 11 c) Awarding Mr. Vargas statutory damages in the amount of \$500.00 per
12 violation, pursuant to 47 U.S.C. § 227(b)(3)(B);
- 13 d) Awarding Mr. Vargas actual damages, pursuant to 47 U.S.C. §
14 227(b)(3)(B);
- 15 e) Awarding Mr. Vargas treble damages, pursuant to 47 U.S.C. § 227(b)(3);
- 16 f) Awarding Mr. Vargas reasonable attorneys' fees and costs incurred in this
17 action;
- 18 g) Awarding Mr. Vargas any pre-judgment and post-judgment interest as may
19 be allowed under the law;
- 20 h) Awarding such other and further relief as the Court may deem just and
21 proper.
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TRIAL BY JURY

63. Mr. Vargas is entitled to and hereby demands a trial by jury.

Respectfully submitted this 28th day of December, 2012.

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